

CHAPTER NO. 852

SENATE BILL NO. 2381

By Clabough

Substituted for: House Bill No. 2320

By Kisber

AN ACT To amend Tennessee Code Annotated, Title 38, Chapter 6; Title 50, Chapter 6; Title 50, Chapter 9; Title 50, Chapter 3; Title 56, Chapter 5 and Title 56, Chapter 47, relative to workers' compensation.

WHEREAS, The Advisory Council on Workers' Compensation has studied various issues and made recommendations to the Special Joint Committee of the General Assembly on Workers' Compensation and to the General Assembly; and

WHEREAS, This Special Joint Committee is aware of other changes that it recommends to be made to the Workers' Compensation Law; and

WHEREAS, This Special Joint Committee on Workers' Compensation recommends the following changes; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-5-314(c)(3), is amended in the first sentence by deleting the language "July 1, 2000" and by substituting instead the language "July 1, 2001".

SECTION 2. Tennessee Code Annotated, Section 56-5-314(c)(4), is amended in the first sentence by deleting the language "July 1, 2000" and by substituting instead the language "July 1, 2001".

SECTION 3. Tennessee Code Annotated, Section 50-6-121(e)(3), is amended by deleting the language "January 15, 2000" and by substituting instead the language "January 1, 2001".

SECTION 4. Tennessee Code Annotated, Section 50-6-207(4)(A)(I), is amended in the second sentence by deleting the language "the employee reaches the age of sixty-five (65)" and by substituting instead the language "the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act".

SECTION 5. Tennessee Code Annotated, Section 50-6-411, is amended by deleting the section in its entirety.

SECTION 6. Tennessee Code Annotated, Section 50-6-414, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b):

(b) If the experience modification factor notification is not received by the employer prior to the policy renewal date, or the policy anniversary date if different, the

experience modification factor shall not be used for premium purposes if its use results in a higher premium for the employer. The mailing of the experience modification factor worksheet shall be sufficient proof of notice, provided such mailing is by certified mail, return receipt requested.

SECTION 7. Tennessee Code Annotated, Section 50-6-225, is amended by deleting subsection (g)(1) in its entirety and substituting instead the following:

(g)(1) If the judgment or decree of a court is appealed pursuant to subsection (e), interest on the judgment or decree shall be computed from the date that the judgment or decree is entered by the trial court at an annual rate of interest five (5) percentage points above the average prime loan rate for the most recent week for which such an average rate has been published by the Board of Governors of the Federal Reserve System on the total judgment awarded by the Supreme Court. For purposes of calculating the accrual of interest pursuant to this subdivision, the average prime loan rate on the day the judgment or decree is entered by the trial court shall be used.

SECTION 8. Tennessee Code Annotated, Section 50-6-225, is amended by adding the following new subdivision (3) to subsection (g):

(3) For purposes of determining the amount of interest that has accrued on a judgment or decree, the Commissioner of the Department of Financial Institutions shall maintain a listing of the average prime loan rate as it becomes available each month and such office shall respond to inquiries concerning what such average prime rate was on a given month and year. If the person making the inquiry so requests, the commissioner shall send such person a letter certifying what the average prime rate was on the month and year requested. The commissioner is authorized to charge a reasonable fee not to exceed ten dollars (\$10.00) for preparing and sending such letter.

SECTION 9. Tennessee Code Annotated, Section 38-6-102, is amended by deleting the second sentence of subsection (d) and substituting instead the following:

This unit shall investigate cases of workers' compensation fraud under Title 56, Chapter 47 and under Title 50, Chapter 6, referred by the Department of Commerce and Insurance and the Department of Labor and Workforce Development.

SECTION 10. Tennessee Code Annotated, Section 56-47-103, is amended by adding the following language as a new subsection:

(d) It shall be unlawful for an employer subject to the workers' compensation law of Tennessee, compiled in Title 50, Chapter 6, to intentionally fail to secure payment of compensation by providing workers' compensation insurance coverage or by qualifying as a self-insurer pursuant to the workers' compensation law.

SECTION 11. Tennessee Code Annotated, Section 56-47-105, is amended by deleting the section in its entirety and by substituting instead the following language:

Violations of Tennessee Code Annotated, Section 56-47-103(a), (b) and (c) are to be valued according to the provisions of Tennessee Code Annotated, Section 39-11-106(a)(36) and punished as theft under Tennessee Code Annotated, Section 39-14-105.

Violations of Tennessee Code Annotated, Section 56-47-103(d), shall be valued to include the total amount of workers' compensation premiums which the employer avoided paying, to be calculated by utilizing the appropriate Tennessee assigned risk plan advisory prospective loss cost and multiplier for such an employer for the total number of years, and parts thereof, during which the employer was subject to the workers' compensation law and intentionally failed to secure payment of compensation as required by the workers' compensation law and said violations shall be punished as theft under Tennessee Code Annotated, Section 39-14-105.

SECTION 12. Tennessee Code Annotated, Section 50-6-410, is amended by deleting subsection (a) in its entirety.

SECTION 13. Tennessee Code Annotated, Section 50-6-410(b), is amended by deleting the phrase "or § 50-6-406".

SECTION 14. Tennessee Code Annotated, Section 50-6-127, is amended by adding the following language as a new subsection:

The Commissioner of Labor and Workforce Development is authorized to refer an employer to the Tennessee Bureau of Investigation for investigation and for appropriate referral for possible prosecution if the commissioner becomes aware the employer had prior knowledge that it was subject to the workers' compensation law and the employer failed to secure payment of compensation as required by the workers' compensation law.

SECTION 15. Tennessee Code Annotated, Section 50-6-405, is amended by deleting subsections (d)(1), (2) and (3) in their entirety and redesignating subsequent subsections appropriately.

SECTION 16. Tennessee Code Annotated, Section 50-6-406, is amended by deleting subsection (b) in its entirety and substituting instead the following:

If an employer fails to comply with the provisions of Section 50-6-405, then during the continuance of such failure, the employer shall be liable to an injured employee either for compensation as provided in this chapter to be recovered in an action brought in a court of competent jurisdiction for that purpose, or for damages to be recovered as if this chapter had not been enacted, as such employee may elect; and in the case suit for damages is brought instead of a suit to recover compensation under the provisions of the workers' compensation law, the employer, when sued shall not be allowed to set up as defense to the action that the employee was negligent, or that the injury was caused by negligence of a fellow servant or fellow employee, or that the employee had assumed the risk of the injury.

SECTION 17. Tennessee Code Annotated, Section 50-6-238(a), is amended by deleting the word "total" where it appears in both the first and second sentences of the subsection.

SECTION 18. Tennessee Code Annotated, Section 50-6-238(b), is amended by deleting the first sentence in the subsection in its entirety and substituting instead the following:

If a specialist has ordered the payment of benefits pursuant to this section, and a court finds that the injury was noncompensable, then an employer or the employer's workers' compensation insurer is entitled to a refund of all amounts paid pursuant to a specialist's order from the second injury fund established by Section 50-6-208, within thirty (30) days of submission of appropriate evidence of such finding to the Division of Workers' Compensation.

SECTION 19. Tennessee Code Annotated, Section 50-6-238(d), is amended by deleting the subsection in its entirety and substituting instead the following:

In addition to any other penalty provided by law, if an insurer or self-insured employer fails to comply with an order issued by a specialist within thirty (30) days of receipt of the order, then the Commissioner of Labor and Workforce Development shall notify the Commissioner of Commerce and Labor of such failure to comply. Upon receipt of such notice, the Commissioner of Commerce and Insurance is authorized to assess a penalty in the amount of fifty dollars (\$50.00) per day of non-compliance, not to exceed five thousand dollars (\$5,000), against such insurer or self-insured employer. Continued failure to comply with the order of the specialist may be considered by the Commissioner of Commerce and Insurance as a violation of Title 56, Chapter 8, which subjects the insurer to the penalty provisions of Section 56-8-109 and may consider any failure by a self-insured employer to comply sufficient grounds to revoke the employer's status as a self-insured employer pursuant to Section 50-6-405.

SECTION 20. Tennessee Code Annotated, Section 50-6-207(1), is amended by designating the existing language as subitem (A) and by adding the following as a new subitem (B):

(B)(i) An employer may choose to continue to compensate an injured employee at the employee's regular wages or salary during the employee's period of temporary total and temporary partial disability. Such payments shall not result in an employee's receiving less than the employee would otherwise receive for temporary disability benefits under the Workers' Compensation Law. However, a court or the Department of Labor and Workforce Development shall have no authority to require an employer to pay any temporary disability benefits required by subitem (A) in addition to the employee's regular wages or salary.

(ii) When an employee receives payments under (B)(i) and the employee's claim for compensation under this chapter is determined by a court or settlement to be compensable, the employer shall be given credit for any such payments. The credit shall be no more than the employee would have been otherwise paid under subitem (A), and any amount paid beyond the amount that would have otherwise been paid under subitem (A) shall not be credited against any award for permanent disability.


SECTION 21. This act shall take effect upon passage, the public welfare requiring it; provided that the provisions of Section 10 through Section 16 shall be effective for violations occurring on and after January 1, 2001, and the provisions of Section 19 shall be effective on July 1, 2000.

PASSED: May 22, 2000


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 31st day of May 2000


DON SUNDQUIST, GOVERNOR